



No.

# In the Supreme Court of the United States

October Term, 1983

---

CHIN NIEN TSANG,  
*Petitioner,*

vs.

BOARD OF GOVERNORS OF WAYNE STATE  
UNIVERSITY,  
*Respondent.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

DAVID J. FRANKS  
(Counsel of Record)  
600 Renaissance Center  
Suite 1400  
Detroit, Michigan 48243  
(313) 259-6650  
*Counsel for Petitioner*

June 7, 1984



### **QUESTIONS PRESENTED**

1. WHERE A STATE COURT ORDER IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION, DOES A FEDERAL COURT ERR IN GIVING EFFECT TO THAT ORDER TO BAR A PLAINTIFF'S CASE IN THE FEDERAL COURT?
2. DOES A STUDENT HAVE A CONSTITUTIONALLY RECOGNIZABLE PROPERTY OR LIBERTY INTEREST IN ATTAINMENT OF HER DOCTOR OF PHILOSOPHY DEGREE, SUCH THAT SHE IS ENTITLED TO SOME DUE PROCESS BEFORE SHE MAY BE DISMISSED FROM THE PH.D. PROGRAM FOR ALLEGED ACADEMIC FAILURE?

## TABLE OF CONTENTS

Opinions Below .....	1
Jurisdiction .....	2
Constitutional and Statutory Provisions Involved .....	2
Statement of the Case .....	4
Reasons for Granting the Writ—	
1. The Courts Below Erroneously Relied Upon a Void State Court Order to Hold That the Case Had Been Adjudicated on the Merits in the State Court, and That the Statute of Limitations Was Not Tolloed by the State Proceedings .....	10
A. The Wayne County Circuit Court Did Not Have Subject Matter Jurisdiction Over This Case, and Its Purported Adjudication on the Merits Was Void .....	10
B. Since the Case Was Not Adjudicated on the Merits in the State Court, the Statute of Limitations Was Tolloed While the Case Was Pending, and the Case in the District Court Was Timely Filed .....	13
2. The Decision of the District Court and the Court of Appeals That Mrs. Tsang Did Not Have Any Property or Liberty Interest in Her Degree Was in Conflict With the Decision of Another Circuit on That Point .....	15
3. The Other Arguments Advanced by the District Court in Its Decision Do Not Bar Petitioner's Claim .....	18
Conclusion .....	21
Appendix .....	A1

### III

## TABLE OF AUTHORITIES

### Cases

<i>Annabel v C. J. Link Lumber Company</i> , 115 Mich. App. 116, 320 N.W.2d 64 (1982) .....	13
<i>Board of Curators of the University of Missouri v Horowitz</i> , 435 U.S. 78 (1978) .....	16, 17
<i>Brookins v Bonnell</i> , 362 F. Supp. 379 (E.D. Pa. 1973) .....	17
<i>Cohen v Outlet Market Company</i> , 311 Mich. 327, 18 N.W.2d 843 (1945) .....	12, 19
<i>Connelly v University of Vermont and State Agricultural College</i> , 244 F. Supp. 156 (D. Vt. 1965) .....	17
<i>Edelman v Jordan</i> , 415 U.S. 651 (1974) .....	19
<i>Ewing v Board of Trustees of the University of Michigan</i> , 552 F. Supp. 881 (E.D. Mich. 1982) .....	20
<i>Fay v Noia</i> , 372 U.S. 391 (1963) .....	14
<i>Fox v Board of Regents of the University of Michigan</i> , 375 Mich. 238, 134 N.W.2d 146 (1965) .....	11
<i>Gaspar v Bruton</i> , 513 F.2d 843 (10th Cir., 1975) ....	15-16, 17
<i>Glass v Dudley Paper Company</i> , 365 Mich. 227, 112 N.W.2d 489 (1961) .....	20
<i>Goss v Lopez</i> , 419 U.S. 565 (1975) .....	16, 21
<i>Great Lakes Realty Company v Peters</i> , 336 Mich. 25, 57 N.W.2d 901 (1953) .....	13
<i>Gresham Park Community Organization v Howell</i> , 652 F.2d 1227 (5th Cir. 1981) .....	11
<i>Hansberry v Lee</i> , 311 U.S. 32 (1940) .....	12, 19
<i>Jordon v Gilligan</i> , 500 F.2d 701 (6th Cir., 1974) .....	14
<i>Kiluma v Wayne State University</i> , 72 Mich. App. 446, 250 N.W.2d 81 (1977) .....	11, 13
<i>Milliken v Meyer</i> , 311 U.S. 457, 462 (1940) .....	14

#### IV

<i>Mt. Healthy City School District Board of Education v Doyle</i> , 429 U.S. 274 (1977) .....	19
<i>Soni v Board of Trustees of the University of Tennessee</i> , 513 F.2d 347 (6th Cir. 1975) .....	20
<i>Strange v Arkansas-Oklahoma Gas Corp.</i> , 534 F. Supp. 138 (W.D. Ark., 1981) .....	11
<i>Times Film Corporation v City of Chicago</i> , 365 U.S. 43, 44-45 (1961) .....	21
<i>Utah Construction Company v State Highway Commission of Wyoming</i> , 16 F.2d 322 (D. Wy. 1926) .....	20
<i>Wikman v City of Novi</i> , 413 Mich. 617, 322 N.W.2d 103 (1982) .....	13

#### Constitutional Provisions

Michigan Constitution of 1963, Article 8, §5 .....	3, 20
United States Constitution—	
Eleventh Amendment .....	2, 19, 21
Fourteenth Amendment, Section One .....	2, 18

#### Statutes

28 U.S.C. §1254(1) .....	2
42 U.S.C. §1983 .....	2, 4, 9, 13, 16
MICH. COMP. LAWS 390.641 .....	3, 20
MICH. COMP. LAWS 600.4401 .....	3, 12
MICH. COMP. LAWS 600.5856 .....	3, 13
MICH. COMP. LAWS 600.6419(1) .....	4, 11

No.

**In the Supreme Court of the United States**

**October Term, 1983**

---

CHIN NIEN TSANG,  
*Petitioner,*

vs.

BOARD OF GOVERNORS OF WAYNE STATE  
UNIVERSITY,  
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

The Petitioner Chin Nien Tsang respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on November 21, 1983.

**OPINIONS BELOW**

The Opinions of the Court of Appeals and of the District Court, not yet reported, appear in the Appendix hereto.

## **JURISDICTION**

The Order of the Court of Appeals was entered on November 21, 1983. A timely petition for reconsideration was denied on March 12, 1984, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### *Amendments to the United States Constitution:*

#### **Eleventh Amendment:**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

#### **Fourteenth Amendment, Section One:**

. . . nor shall any State deprive any person of life, liberty or property, without due process of law . . .

### *Statutes of the United States:*

#### **42 U.S.C. §1983:**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.



*State Constitutional Provisions:*

Michigan Constitution of 1963, Article 8, §5:

. . . the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds.

*State Statutory Provisions:*

MICH. COMP. LAWS 390.641:

There is hereby established a state institution of higher education to be located in the industrial area of southeastern Michigan. . . . The conduct of its affairs and control of its property shall be vested in a board of governors, the members of which shall constitute a body corporate known as the "board of governors of Wayne state university," hereinafter referred to as "the board," with the right as such of suing and being sued, of adopting a seal, and altering the same.

MICH. COMP. LAWS 600.4401 (as in effect at the time of the state court action):

All actions for mandamus against state officers shall be commenced in the court of appeals or in the supreme court, as provided by rules by the supreme court.

MICH. COMP. LAWS 600.5856:

The statutes of limitations are tolled when (1) the complaint is filed and a copy of the summons and complaint are served on the defendant . . .

MICH. COMP. LAWS 600.6419(1):

. . . the jurisdiction of the court of claims as conferred upon it by this chapter over claims and demands against the state or any of its departments, commissions, boards, institutions, arms or agencies, shall be exclusive. . . . The court has power and jurisdiction:

(a) To hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms or agencies.

### STATEMENT OF THE CASE

Petitioner Chin Nien Tsang filed an action in the United States District Court for the Eastern District of Michigan. Under 42 U.S.C. §1983 she alleged constitutional violations by Wayne State University, as well as breaches of contract. The factual basis of the claim will be set forth in greater detail below. The District Court dismissed the claims on the grounds that the Statute of Limitations had run prior to the time she filed the claim. The Court of Appeals for the Sixth Circuit affirmed.

Mrs. Tsang now petitions this Honorable Court to hear this case, because the Sixth Circuit improperly relied upon a void state judgment in holding that the Statute of Limitations had expired. Instead, the Court should have held that the prior state proceedings had tolled the Statute, and that Mrs. Tsang's claim had been timely filed in the District Court.

The reliance by the federal courts upon a void state judgment to bar an otherwise legitimate federal claim is an important and egregious departure from the accepted and usual course of judicial proceedings. The federal

courts cannot allow themselves to be limited by state courts which act beyond their jurisdiction. This is particularly so where, as here, the plaintiff has presented a federal cause of action. In this case, this Court should intervene to preserve the integrity of the federal court system under these circumstances.

Although the federal courts are required to give full faith and credit to the judgments of state courts, the jurisdiction of the state court to render the judgment is always open to question. In this case, Mrs. Tsang showed that the Wayne County Circuit Court did not have subject matter jurisdiction over her claim. That court's purported disposition of the case on the merits was therefore void, and it was improper for the federal courts to give that judgment any faith and credit whatsoever.

Mrs. Chin Nien Tsang was a candidate for a Doctor of Philosophy in Education degree at Wayne State University. The defendant University had three broad requirements for the degree: course work, successful performance in a qualifying examination, and completion of a dissertation. At the beginning of Mrs. Tsang's Ph.D. program, she and the University set forth the area of study, the specific courses required and other relevant aspects of the program in a document called the "Plan of Work." In addition, the program was governed by a manual entitled "Policies and Procedures for the Doctorate in Education," and by the "Wayne State University 1971-1972 Bulletin, College of Liberal Arts, Academic Regulations, Graduate." Throughout the proceedings below and in the state court, Mrs. Tsang has argued that these documents constituted a contract between herself and Wayne State University.

Mrs. Tsang successfully completed the required courses. But prior to the time she was to take the qualify-

ing examination, her advisor resigned as the result of a departmental dispute. Mrs. Tsang was first informed that she would not be permitted to take the test because she did not have an advisor. Despite numerous requests, the University failed to appoint another advisor. Eventually, the University did schedule an examination, but did not appoint an advisor, as required by the contract. In addition, the committee which administered the test was composed of individuals from whom Mrs. Tsang had not taken course work, contrary to the procedures set forth in the above Regulations. As a result, the examination included subjects which were outside her area of study, and she did not pass.

A second test was administered, but under the same conditions as the first. Again, Mrs. Tsang did not pass. The University offered to administer another test, but Mrs. Tsang declined to take it unless the University would change the makeup of the administering committee to comply with the University's own guidelines. On January 30, 1975, without prior notice, she was terminated from the Ph.D. program.

As a result of that action, Mrs. Tsang has stated both civil rights and contract claims against the University. She alleges first that she was deprived of a property or liberty interest without due process of law. In addition, the actions of the University violated the terms of the contract, causing her to fail the examination. Furthermore, the deprivation of her property and liberty interests without due process was intentional and fraudulent, and not for truly academic reasons. Finally, she argues that the University intentionally and fraudulently failed her out of racially discriminatory motives, because Mrs. Tsang herself is Chinese, and because her proposed dissertation topic was, "Tracing International Understanding Between China and the United States by Measuring Cultural Distances".

Acting in Pro Per, Mrs. Tsang filed a Complaint in the Wayne County Circuit Court, for monetary damages against the University, and seeking further relief in the nature of a mandamus, specifically an order that the University confer a Doctorate in Philosophy upon Mrs. Tsang.

Under the laws of the State of Michigan, the Circuit Court has no subject matter jurisdiction over claims for money damages against state universities. That jurisdiction is given exclusively to the Michigan Court of Claims. In addition, at all times relevant to the Wayne County action, the Circuit Court did not have jurisdiction to issue a mandamus against the state. That jurisdiction was vested exclusively in the Michigan Court of Appeals or Supreme Court. The Wayne County Circuit Court thus had no jurisdiction to consider the subject matter of any part of Mrs. Tsang's claim. Under Michigan law, all that the Court could do was dismiss the claim.

The defendant moved for Summary Judgment on that basis, and the Circuit Court granted the motion. However, the Order dismissing the case purported to be "With Prejudice". Both the District Court and the Court of Appeals below interpreted that Order as a determination on the merits.

Mrs. Tsang then filed a claim in the Michigan Court of Claims. That court granted an accelerated judgment dismissing the case on the grounds that the Plaintiff had already litigated the merits of the controversy in the Wayne County Circuit Court. But, as noted above, the Circuit Court had had no power to determine the matter on the merits.

Mrs. Tsang then filed an Application for Delayed Leave to Appeal in the Michigan Court of Appeals. That Court dismissed the application, without reaching the mer-

its of the case. The Court also denied Plaintiff's request for reconsideration.

Thereafter, Mrs. Tsang sought Leave to Appeal to the Michigan Supreme Court. The Supreme Court, too, denied leave, and denied Mrs. Tsang's request for reconsideration. Under Michigan law, these denials of leave did not constitute decisions on the merits.

Mrs. Tsang then instituted the present action in the District Court. The University moved for dismissal, which the Court granted on the grounds that the case was barred by the Statute of Limitations. The Court also concluded that the case was without merit. On appeal, the Sixth Circuit initially affirmed "for the reasons given by [the District Court] in its memorandum opinion". (Appendix, p. A2). Upon reconsideration, the Court concluded only that the case was barred by the statute of limitations. (Appendix, p. A3-5). The Court did not discuss the other arguments for dismissal.

Mrs. Tsang's cause of action accrued on January 30, 1975, when she was terminated from the Ph.D. program at Defendant Wayne State University. She filed the present action on September 10, 1982, more than seven years later. The Sixth Circuit correctly held that the Statute of Limitations applicable to Mrs. Tsang's constitutional claim was three years. But the Court erroneously held that almost five years of intervening state court proceedings had not tolled the Statute.

About one year and ten months after her cause of action accrued, on November 12, 1976, Mrs. Tsang filed a Complaint in Michigan's Wayne County Circuit Court. The cause of action pleaded there arose out of the same transaction as the present case. The state court proceedings were not finally terminated until October 13, 1981,



when the Michigan Supreme Court denied reconsideration of its denial of leave to appeal.

Mrs. Tsang then filed this case in the U. S. District Court on September 10, 1982, less than a year after the state courts' final determination. Assuming that the state court proceedings tolled the Statute of Limitations, only about two years and nine months of the Statute had run. Since, as the Sixth Circuit properly held, the applicable Statute of Limitations was three years, Mrs. Tsang's Complaint was timely filed.

This case thus turns upon the question of whether or not the state court proceedings had tolled the Statute. The Sixth Circuit correctly noted that, in cases arising under 42 U.S.C. §1983, the Federal Courts apply not only the state limitations period, but also the state rules for tolling that period. In Michigan, the limitations period is tolled while the case is pending in any state court, even one without subject matter jurisdiction, as long as the final disposition of the case is not on the merits.

The Sixth Circuit erroneously held that the state court disposition, beginning with the Wayne County Circuit Court's order granting summary judgment, was on the merits. This is the source of the error now presented to this Court. The only state Order purporting to decide the case on the merits was that of the Wayne County Circuit Court. Since that court did not have subject matter jurisdiction, its order is void. None of the subsequent state court orders was on the merits. Therefore, the statute of limitations was tolled, under state law, from the initial filing until the final disposition. For this reason, the present case was timely filed in the District Court below, and the dismissal of the case was improper.

In addition, the District Court stated that Mrs. Tsang had no property or other interest worthy of due process

protection. The Court of Appeals did not specifically discuss this issue in affirming. It is unclear whether the Court of Appeals affirmed on that ground, or ultimately relied solely upon the statute of limitations. In either event, that position was in conflict with decisions of this Court and more specifically with the holding of the Tenth Circuit. Because the District Court did not believe that Mrs. Tsang had a protected interest, the Court did not reach the question of how much process is due under these circumstances.

### **REASONS FOR GRANTING THE WRIT**

#### **1.**

**THE COURTS BELOW ERRONEOUSLY RELIED UPON A VOID STATE COURT ORDER TO HOLD THAT THE CASE HAD BEEN ADJUDICATED ON THE MERITS IN THE STATE COURT, AND THAT THE STATUTE OF LIMITATIONS WAS NOT TOLLED BY THE STATE PROCEEDINGS.**

#### **A.**

**THE WAYNE COUNTY CIRCUIT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS CASE, AND ITS PURPORTED ADJUDICATION ON THE MERITS WAS VOID.**

Mrs. Tsang first filed her claim in the Wayne County Circuit Court. That Court issued an Order purporting to dismiss the case with prejudice. But the Court did not have subject matter jurisdiction, and had no power to do any more than dismiss the case without prejudice. It could not decide the case on the merits.



In the Wayne County case, Mrs. Tsang requested monetary relief against the Defendant, a state university. (Appendix, p. A18-20). The Michigan statutes provide that the Court of Claims shall have exclusive jurisdiction over claims for monetary damages against the state or any of its agencies. MICH. COMP. LAWS 600.6419(1). This includes claims against state universities. *Fox v Board of Regents of the University of Michigan*, 375 Mich. 238, 134 N.W.2d 146 (1965).

Subject matter jurisdiction over claims against the defendant herein, Wayne State University, is also vested exclusively in the Court of Claims by the above-cited statute. *Kiluma v Wayne State University*, 72 Mich. App. 446, 250 N.W.2d 81 (1977). For this reason, the Wayne County Circuit Court had no subject matter jurisdiction over Mrs. Tsang's claim for money damages.

In *Fox*, supra, the Michigan Supreme Court held that, when a court has no subject matter jurisdiction over a matter, it should proceed no further, and should dismiss the case. Lacking subject matter jurisdiction, any other acts would be void and a mere nullity. The Supreme Court held that the Circuit Court did not even have the power to order the case transferred to the proper forum.

The federal courts, too, have uniformly held that a court without jurisdiction cannot rule on the merits of the case. *Gresham Park Community Organization v Howell*, 652 F.2d 1227 (5th Cir. 1981); *Strange v Arkansas-Oklahoma Gas Corp.*, 534 F. Supp. 138 (W.D. Ark., 1981).

Since the Wayne County Circuit Court did not have subject matter jurisdiction over the claim for monetary damages, it had no power to adjudicate it on the merits. It could dismiss the case, but only without prejudice. Its order purports to determine the case on its merits, but,

being an act beyond its jurisdiction, that determination is void and a nullity.

Mrs. Tsang also requested relief in the nature of mandamus. Although her complaint was titled "Complaint for Declaratory Judgment and Money Judgment", she asked the Court to order the Defendant to confer a doctorate upon her. (Appendix, p. A20). That request for an order compelling a state agency to act was a request for a mandatory injunction against a state officer. Jurisdiction over such claims was conferred exclusively upon the Michigan Court of Appeals. MICH. COMP. LAWS §600.4401.

At the time of the Wayne County action, that statute explicitly provided that:

All actions for mandamus against state officers shall be commenced in the court of appeals or in the supreme court, as provided by rules of the supreme court.

The Circuit Court thus had no jurisdiction over the subject matter, and no power to decide the case on the merits. Its attempt to do so was absolutely void, and must be disregarded. It cannot be treated as a decision on the merits.

Mrs. Tsang then filed a complaint in the Michigan Court of Claims. That Court granted accelerated judgment to the Defendant on the grounds that Mrs. Tsang had already litigated the same controversy in Wayne County Circuit Court. (Appendix, p. A12). But a void judgment cannot act to foreclose a later suit under the doctrines of either collateral estoppel or res judicata. *Hansberry v Lee*, 311 U.S. 32 (1940); *Cohen v Outlet Market Company*, 311 Mich. 327, 18 N.W.2d 843 (1945).

Moreover, the Court of Claims, too, lacked subject matter jurisdiction over the mandamus claim.

Mrs. Tsang then sought leave to appeal to both the state Court of Appeals and Supreme Court. The Court of Appeals dismissed for lack of jurisdiction, and the Supreme Court denied leave. These denials of Mrs. Tsang's applications for leave to appeal to the Michigan Court of Appeals and Supreme Court were not adjudications on the merits. In Michigan, a mere denial of leave to appeal is not a decision on the merits of the case. *Great Lakes Realty Company v Peters*, 336 Mich. 25, 57 N.W.2d 901 (1953).

It is clear, then, that Mrs. Tsang's claim was never decided on the merits by a state court with proper jurisdiction.

#### B.

#### **SINCE THE CASE WAS NOT ADJUDICATED ON THE MERITS IN THE STATE COURT, THE STATUTE OF LIMITATIONS WAS TOLLED WHILE THE CASE WAS PENDING, AND THE CASE IN THE DISTRICT COURT WAS TIMELY FILED.**

The Sixth Circuit correctly held that the state rules for tolling the statutes of limitations should be applied to actions brought under 42 U.S.C. §1983.

Under the provisions of MICH. COMP. LAWS §600.5856, the period of limitations on a cause of action is tolled during the time a prior suit is pending between the parties if the prior action is not adjudicated on the merits. *Annabel v C. J. Link Lumber Company*, 115 Mich. App. 116, 320 N.W.2d 64 (1982). The statute will be tolled even if the court in which it is pending does not have subject matter jurisdiction. *Wikman v City of Novi*, 413 Mich. 617, 322 N.W.2d 103 (1982); *Kiluma*, supra. In *Kiluma*, the Court specifically held that the statute of limitations

applicable to a suit for money damages against Wayne State University was tolled by filing the case in the Wayne County Circuit Court.

This tolling rule only applies where the prior case was not adjudicated on the merits. In the present case, the only state court which purported to adjudicate the case on the merits was the Wayne County Circuit Court. But, as shown above, that court did not have subject matter jurisdiction of the controversy, and any act beyond dismissal without prejudice was void. The Wayne County court simply did not have the power to decide the merits of the case. Furthermore, as noted above, no other state court even pretended to reach the merits of Mrs. Tsang's case.

It is clear, then, that Mrs. Tsang's case was tolled during the pendency of the state court proceedings, and that the Sixth Circuit Court of Appeals erred in holding otherwise. The Court incorrectly precluded Mrs. Tsang from litigating her claim because of a state court order which was clearly void under the statutes and case law of the rendering state.

This Court has held that:

Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. *Milliken v Meyer*, 311 U.S. 457, 462 (1940).

The Sixth Circuit itself has held that "a void judgment is no judgment at all and is without legal effect." *Jordon v Gilligan*, 500 F.2d 701 (6th Cir., 1974). It is a general principle that void judgments may be collaterally impeached. *Fay v Noia*, 372 U.S. 391 (1963). Mrs. Tsang was thus well within her rights in attacking the state court judgment for voidness.

In the present case, neither the District Court nor the Circuit Court gave any consideration to Mrs. Tsang's proofs that the judgment in question was void, and was open to collateral attack. Instead, both courts gave credit to the judgment, and relied upon it to bar her claim. This decision was thus in conflict with the general rule that a void judgment may be collaterally impeached. It should not be allowed to stand.

To allow this case to be terminated because of the false conclusion that a valid judgment had been rendered in the state court would in effect deny the petitioner the right to be heard. This Court should grant certiorari in order to confirm the duty of the federal courts to disregard void state judgments when the invalidity of the state action has been collaterally proven.

2.

**THE DECISION OF THE DISTRICT COURT AND COURT OF APPEALS THAT MRS. TSANG DID NOT HAVE ANY PROPERTY OR LIBERTY INTEREST IN HER DEGREE WAS IN CONFLICT WITH THE DECISION OF ANOTHER CIRCUIT ON THAT POINT.**

The District Court judge held that Mrs. Tsang did not have a sufficient interest in her degree to entitle her to due process protection. He stated that:

Plaintiff did not have anything "more than a unilateral expectation of" receiving her degree. She did not have "a legitimate claim of entitlement to it" sufficient to require due process protection . . . (Appendix, p. A8).

In its initial Order, the Sixth Circuit Court of Appeals affirmed. This decision is in conflict with the decision of the Tenth Circuit in *Gaspar v Bruton*, 513 F.2d 843

(10th Cir., 1975). It is also in conflict with this Court's decision in *Goss v Lopez*, 419 U.S. 565 (1975). This court should grant certiorari in the present case, in order to resolve this conflict. Furthermore, the question of whether a student has a property or liberty interest which is entitled to due process protection is an important one, which has been the subject of increasing litigation in both the state and federal courts. This Court has not yet decided this issue, and should take the opportunity to do so in the present case.

In *Goss*, supra, this court held that a high school student has a sufficient property interest in his education that he may not be expelled for disciplinary reasons without certain minimum procedural due process. That holding establishes that a student has more than a mere "unilateral expectation" of receiving a diploma or degree.

This Court has since declined to decide whether that interest (or a related liberty interest) was sufficient to require procedural due process in the context of academic dismissals. *Board of Curators of the University of Missouri v Horowitz*, 435 U.S. 78 (1978). But in *Gaspar*, the Tenth Circuit held that it did. In that case, the plaintiff was a nursing student who had been dismissed for academic failure. She filed a claim under 42 U.S.C. §1983, alleging that the dismissal had been so conducted as to deprive her of a property interest in her education without due process. The Court held that:

We have no difficulty in concluding that in light of *Goss*, supra, where the Supreme Court recognized a *property right* in public school students that certainly such a right must be recognized to have vested with *Gaspar*, and the more prominently so in that she paid a specific, separate fee for enrollment and attendance at the Gordon Cooper School. The cause



is, then, cognizable under the Civil Rights Act. 513 F.2d at 850. (Emphasis in original).

In the present case, the lower courts denied the existence of this right. That decision is in clear conflict with the decision in *Gaspar*. For this reason, this Court should grant certiorari.

Furthermore, Mrs. Tsang's claim was that she had been dismissed intentionally and fraudulently, and that the tests which she failed had been prepared in such a way as to insure her failure. She alleged that University officials deliberately tested her outside her field. This claim alleges more than a mere academic dismissal. However reluctant the courts may be to interfere in the process of academic evaluation, this case, which involves an intentional dismissal for contrived academic reasons, is entirely different.

To date, at least two district courts have recognized that, where a purportedly academic dismissal was in fact motivated by non-academic reasons, the student has interests which are protected by the Due Process clause. *Brookins v Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973), *Connelly v University of Vermont and State Agricultural College*, 244 F. Supp. 156 (D. Vt. 1965). Moreover, in *Horowitz*, *supra*, this Court recognized that several courts have implied in dictum that academic dismissals may be enjoined if they are the result of arbitrary or capricious action by university officials. 435 U.S. at 91. The Tenth Circuit also implied such a cause of action in *Gaspar*, *supra*.

In the present case, Mrs. Tsang alleged that she had been forced to take her test without an advisor, that she had been limited to tests which were composed by improperly constituted committees, and that the university officials had intentionally and fraudulently failed her. These

allegations clearly set forth a claim of arbitrary and capricious action. But the District Court utterly failed to consider this aspect of Mrs. Tsang's claim. The Court's inquiry was limited by its erroneous belief that Mrs. Tsang had no interest worthy of protection under the Fourteenth Amendment.

This Court should grant certiorari in order to resolve the question of whether a candidate for an advanced degree has a property or liberty interest sufficient to require due process protection. This Court should also hear this case to determine the degree of due process required when a purportedly academic dismissal is in fact made for non-academic reasons.

### 3.

#### **THE OTHER ARGUMENTS ADVANCED BY THE DISTRICT COURT IN ITS DECISION DO NOT BAR PETITIONER'S CLAIM.**

Other arguments were raised by the District Court in dismissing Mrs. Tsang's case. Although these issues were not the basis for the dismissal, they are worthy of brief discussion, in anticipation of the likelihood that defendant will raise them in responding to this Petition.

The District Court stated that Mrs. Tsang is collaterally estopped from claiming that she met her degree requirements "by the previous judgment of the Wayne County Circuit Court". (Appendix, p. A8). Yet, as shown above, the judgment of that Court was absolutely void.

. . . it is axiomatic that, before a judgment can have issue preclusive effect under the doctrines of either *res judicata* or collateral estoppel, that judgment must be *valid*. *Davis v Chevy Chase Financial Limited*, 667 F.2d 160 (D.C. Cir. 1981) (Emphasis in original).



Cf. *Hansberry v Lee*, 311 U.S. 32 (1940), *Cohen v Outlet Market Company*, 311 Mich. 327, 18 N.W.2d 843 (1945).

Since the Wayne County Circuit Court judgment was void, it cannot have collateral estoppel effect. The District Court's position on this point was clearly in error.

The Court also stated that the present claim was barred by the Eleventh Amendment, which generally prohibits the federal courts from entering money judgments against states or their agencies. That decision is incorrect for two reasons.

First, the Eleventh Amendment does not prohibit the federal courts from providing prospective injunctive relief against state officials in their official capacities. *Edelman v Jordan*, 415 U.S. 651 (1974). Mrs. Tsang's request for an order to award her the degree is clearly outside the ambit of the Eleventh Amendment, and this portion of her case is not subject to dismissal on these grounds.

Second, the District Court made its determination without first determining whether or not Wayne State University is an arm of the state within the meaning of the Amendment. In *Mt. Healthy City School District Board of Education v Doyle*, 429 U.S. 274 (1977), this Court enumerated several factors to be used in determining the nature of the entity created by state law. These include the degree to which the entity is subject to guidance from the state, the amount of state money it receives, and whether it can issue bonds or levy taxes. These are questions of fact, and a decision on this question is inappropriate for summary judgment.

In *Mt. Healthy*, this Court held that the Board was not an arm of the state, even though it was subject to some guidance by the state and even though it received

a significant amount of money from the state treasury. In the present case, the University probably receives substantial state funds (although no evidence was adduced to that effect in the lower courts), but Michigan's statutes and case law provide that the regents of the University are virtually exempt from guidance by the state. Article 8, §5 of the state constitution provides that the governors of Wayne State University constitute a body corporate which shall have general supervision of the institution and the control of its funds. The Michigan Supreme Court has interpreted this provision as investing the University with the entire control and management of the affairs of the institution, to the exclusion of all other departments. *Glass v Dudley Paper Company*, 365 Mich. 227, 112 N.W.2d 489 (1961).

At the very least, then, there is a question of fact in this case as to whether the University is such an arm of the state as to fall within the Eleventh Amendment prohibition of suit.

Finally, the District Court failed to consider the issue of the University's waiver of the Eleventh Amendment protection. Michigan statutes create in the University the power to sue and be sued. MICH. COMP. LAWS §390.641. Some courts have held that "sue or be sued" language may constitute a waiver of any Eleventh Amendment immunity the state may have, although the courts have also held that whether the language constitutes a waiver depends upon the extent of the consent to be sued and upon the context of the language involved. *Soni v Board of Trustees of the University of Tennessee*, 513 F.2d 347 (6th Cir. 1975); *Utah Construction Company v State Highway Commission of Wyoming*, 16 F.2d 322 (D. Wy. 1926); *Ewing v Board of Trustees of the University of Michigan*, 552 F. Supp. 881 (E.D. Mich. 1982).

In the present case, the District Court did not consider the question of whether or not the "sue or be sued" language constitutes a waiver of Eleventh Amendment immunity. Its position that the Amendment bars the present claim is thus premature.

### CONCLUSION

Mrs. Chin Nien Tsang respectfully requests that this Court issue a writ of certiorari for two reasons. First, the lower courts improperly gave credit to, and relied upon, a void order of a state court to bar Petitioner's claim. Once Mrs. Tsang had raised the issue of the state court's subject matter jurisdiction over the controversy, the federal courts had a duty to decide the issue of voidness. The lower courts' failure to do so calls for review by this Court.

In addition, the precise question at issue here has never been specifically decided by this Court. Certiorari may be granted under such circumstances. *Times Film Corporation v City of Chicago*, 365 U.S. 43, 44-45 (1961).

Second, the courts' decision that Mrs. Tsang did not have any interest protected by the right to due process is in clear conflict with the holding of the Tenth Circuit, and also conflicts with the decision of this Court in *Goss*. This Court should grant certiorari in order to resolve that conflict.

Respectfully submitted,

DAVID J. FRANKS

600 Renaissance Center

Suite 1400

Detroit, Michigan 48243

(313) 259-6650

*Counsel for Petitioner*

Dated: June 7, 1984



**APPENDIX**

(Filed November 21, 1983)

No. 83-1031

---

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

CHIN NIEN TSANG,  
Plaintiff-Appellant,

v.

BOARD OF GOVERNORS,  
WAYNE STATE UNIVERSITY,  
Defendants-Appellees.

---

**ORDER**

BEFORE: KEITH and CONTIE, Circuit Judges; and  
POTTER,\* District Judge

Plaintiff appeals pro se from a district court judgment dismissing her civil rights complaint filed under 42 U.S.C. §1983 against the Board of Governors of Wayne State University. Plaintiff alleged that the defendants denied her due process and equal protection by purposely and fraudulently causing her to flunk a test which she needed to pass to gain admission to a Ph.D. program at the University. The district court dismissed the complaint for being time-barred under the applicable Michigan statute

---

\*The Honorable John W. Potter, District Judge for the Northern District of Ohio, sitting by designation.

of limitations. Notwithstanding its being time-barred, the court also ruled that the complaint lacked any merit.

Upon a careful review of the district court record and of the briefs filed in this cause, this Court concludes that the district court properly dismissed the plaintiff's complaint for the reasons given by it in its memorandum opinion filed in its court on December 8, 1982.

This panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The district court's judgment is, accordingly, affirmed pursuant to Rule 9(d), Rules of the Sixth Circuit, because the questions on which the cause depends are so unsubstantial as not to need further argument.

ENTERED BY ORDER OF THE  
COURT

/s/ John P. Hehman  
Clerk

ISSUED AS MANDATE: March 30, 1984

COSTS: NONE

(Filed March 12, 1984)

No. 83-1031

---

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

CHIN NIEN TSANG,  
Plaintiff-Appellant,

v.

BOARD OF GOVERNORS, WAYNE  
STATE UNIVERSITY,  
Defendants-Appellees.

---

**ORDER**

BEFORE: KEITH and CONTIE, Circuit Judges; and  
POTTER, District Judge\*

This pro se plaintiff requests reconsideration of this Court's order entered on November 21, 1983, affirming the district court's judgment dismissing her §1983 civil rights complaint.

This Court has again carefully reviewed this cause and concludes that the district court correctly dismissed plaintiff's lawsuit because it was time-barred. The Supreme Court ruled in *Board of Regents v. Tomanio*, 446 U.S. 478 (1980), that federal courts are not only obligated to apply

---

\*The Honorable John W. Potter, District Judge for the Northern District of Ohio, sitting by designation.

analogous state statutes of limitations for determining the timeliness of §1983 complaints, but they are also to apply the state's rules for tolling the statute of limitations. In this circuit, it is well settled that Michigan's three year statute of limitations for injuries to persons and property applies to govern the timeliness of civil rights complaints. *EEOC v. Detroit Edison Co.*, 515 F.2d 301, 315 (6th Cir. 1975). In the instant case, plaintiff admits that she was terminated from her Ph.D. program on January 30, 1975, which is almost seven years prior to the filing of her lawsuit in the district court. Plaintiff argues, however, that the statute of limitations was tolled during the time she had a lawsuit pending in the Michigan state courts which she had brought against these same defendants. She also contends that her cause of action did not even accrue until October 6, 1982, when the defendants admitted in their briefs that the plaintiff was being prevented from continuing with her doctorate program.

Plaintiff's arguments are simply disingenuous. A statute of limitations may be tolled under M.C.L. §600.5856 during the time a prior suit is pending between the parties if the prior action is not adjudicated on the merits. *Annabel v. C. J. Link Lumber Co.*, 320 N.W.2d 64, 115 Mich. App. 116 (1982). In this case, however, the clear language of the state court judgment which was entered in state court litigation initiated by this plaintiff indicates that the judgment was, indeed, entered on the merits. Subsequent rulings by the state appellate courts also demonstrate that the judgment was entered on the merits. The applicable state statute of limitations was, therefore, not tolled by the amount of time that this plaintiff had litigation pending in the Michigan state courts. Plaintiff's cause of action also did not accrue seven years after she



was terminated from the Ph.D. program; rather, it accrued on January 30, 1975, the date that she was terminated from the program, as she knew at that time of her injury and she could have filed a facially valid suit complaining of her termination from the program. Cf. *Connelly v. Paul Ruddy's Equipment Repair & Service Company*, 200 N.W.2d 70, 388 Mich. 146 (Mich. 1972).

For these reasons, it is apparent that this Court properly affirmed the district court's judgment pursuant to Rule 9(d)3, Rules of the Sixth Circuit. The motion to reconsider is, accordingly, denied.

ENTERED BY ORDER OF THE  
COURT

/s/ John P. Hehman  
Clerk

(Dated December 8, 1982)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

C.A. No. 8273399

Hon. Robert E. DeMascio

---

CHIN NIEN TSANG,  
Plaintiff,

-vs-

BOARD OF GOVERNORS OF WAYNE STATE  
UNIVERSITY,  
Defendant.

---

**MEMORANDUM OPINION**

The plaintiff alleges that her rights secured under the Fifth and Fourteenth Amendments of the United States Constitution have been violated by the defendants' denial of her doctor of philosophy degree. Specifically, the plaintiff alleges that she was denied due process and the equal protection of the laws. The defendants filed a motion to dismiss or for summary judgment alleging that plaintiff's claims are barred by a previous Wayne County Circuit Court decision and by the applicable statute of limitations.

Plaintiff's complaint does not reveal the basis for this court's subject matter jurisdiction. However, the allegations contained in plaintiff's complaint does make out

a claim pursuant to 42 U.S.C. § 1983. In determining which statute of limitations will apply, we must look to the most appropriate state statute of limitations. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975). The rule in this circuit is that Michigan's three-year statute of limitations for injuries to persons or property applies. M.C.L.A. § 600.5805 (supp. 1982); *Geromette v. General Motors Corp.*, 609 F.2d 1200, 1201 (6th Cir. 1979); *EEOC v. Detroit Edison Co.*, 515 F.2d 301, 308-9, 315 (6th Cir. 1975).

The plaintiff admits that she was terminated from her Ph.D. program on January 30, 1975, almost seven years prior to the date of the commencement of this suit. The plaintiff argues, however, that the statute of limitations was tolled during the pendency of her state court actions. The plaintiff is correct. A statute of limitations is tolled under Michigan law during the pendency of a previous lawsuit, where the previous lawsuit is dismissed without prejudice. *Zahler v. Star Steel Supply Co.*, 50 Mich. App. 386, 390 (1973); *Bennett v. Carpenter*, 45 Mich. App. 552, 555-6 (1973). However, plaintiff's prior suit in Wayne County Circuit Court was dismissed with prejudice and, therefore, the statute of limitations was not tolled. *Bennett v. Carpenter*, 45 Mich. App. at 557. The plaintiff admits she did not file her constitutional claims in the prior action. We, therefore, find that the three-year statute of limitations has run with respect to plaintiff's claims here.

Notwithstanding the three-year statute of limitations, plaintiff has failed to state a claim upon which relief can be granted. Plaintiff's claim for damages is barred by the application of the eleventh amendment since she clearly seeks an award of damages to be paid from the state treasury. Moreover, plaintiff has failed to allege malice or bad faith on the part of the individual defendants sufficient

to subject them to personal liability. *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). With respect to her claim that we should compel the defendants to confer a degree upon her, we conclude that defendants' actions did not deny her due process of law. Plaintiff did not have anything "more than a unilateral expectation of" receiving her degree. She did not have "a legitimate claim of entitlement to it" sufficient to require due process protection because she did not meet the requirements for the degree. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). The plaintiff is collaterally estopped from claiming that she did meet all the requirements for the degree by the previous judgment of the Wayne County Circuit Court. Finally, we find that the defendant's action did not deny plaintiff equal protection of the laws. Defendant did not deny plaintiff her degree on the basis of any suspect classification nor did it interfere with her exercise of some fundamental right. See *San Antonio School District v. Rodriguez*, 411 U.S. 1, 19, 29, 37 (1973).

Accordingly, we grant the defendant's motion to dismiss plaintiff's complaint as barred by the applicable statute of limitations.

IT IS SO ORDERED.

/s/ Robert E. DeMascio  
Robert E. DeMascio  
United States District Judge

Dated: December 8, 1982

(Dated December 8, 1982)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

C.A. No. 8273399  
Hon. Robert E. DeMascio

---

CHIN NIEN TSANG,  
Plaintiff,

-vs-

BOARD OF GOVERNORS OF WAYNE  
STATE UNIVERSITY,  
Defendant.

---

**JUDGMENT**

This matter having come before the court on defendant's motion to dismiss, and the court having entered its Memorandum Opinion,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED

that defendant's motion to dismiss be and the same hereby is GRANTED and the plaintiff's complaint is hereby DISMISSED.

Dated at Detroit, Michigan, this 8th day of December 1982.

/s/ Robert E. DeMascio  
Robert E. DeMascio  
United States District Judge

(Dated January, 1977)

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE  
COUNTY OF WAYNE

---

No. 76-635-485-CZ  
Honorable John M. Wise (P-22467)

---

CHIN NIEN TSANG,  
Plaintiff,

vs.

WAYNE STATE UNIVERSITY,  
Defendant.

---

**ORDER FOR SUMMARY JUDGMENT  
WITH PREJUDICE TO PLAINTIFF**

At a session of said Court held in the City-County Building, Detroit, Michigan, on February 18, 1977

PRESENT: HONORABLE: JOHN M. WISE, CIRCUIT COURT JUDGE

The above-entitled action having come on regularly for hearing on defendant's Motion for Summary Judgment, attorneys for plaintiff, defendant and Barry S. Markman, Assistant Dean of Graduate Division, having appeared and presented arguments and testimony to the Court, and the Court having determined that the plaintiff has failed to state a claim upon which relief can be granted, and the Court being fully advised in the premises,

A11

NOW, THEREFORE, IT IS HEREBY ORDERED AND  
ADJUDGED, that the Motion For Summary Judgment is  
hereby granted, and plaintiff's Complaint is dismissed  
with prejudice.

/s/ John M. Wise  
Circuit Court Judge

DATED: January, 1977

(Filed July 19, 1978)

STATE OF MICHIGAN  
IN THE COURT OF CLAIMS

---

Docket No. 6049

---

CHIN NIEN TSANG,  
Plaintiff

v

WAYNE STATE UNIVERSITY  
BOARD OF GOVERNORS, et al.,  
Defendants.

---

**ORDER FOR ACCELERATED JUDGMENT WITH  
PREJUDICE AGAINST PLAINTIFF**

At a session of said court held in the Eaton County Courthouse, Charlotte, Michigan on July 17, 1975

**PRESENT:** Hudson E. Deming

A Motion for Accelerated Judgment for No Cause of Action, pursuant to GCR 1963, 116.1(5), having been filed heretofore by Defendants, Wayne State University; attorneys for Plaintiff and Defendants having appeared and presented arguments to the Court, and the Court having determined that Plaintiff has previously litigated the same controversy in the Circuit Court for the County of Wayne, Case No. 76.635.985C2; and received a final Order for Summary Judgment With Prejudice to Plaintiff dated February 18, 1977; and the Court being fully advised in the premises,



NOW, THEREFORE, IT IS HEREBY ORDERED AND  
ADJUDGED that an Accelerated Judgment of No Cause  
for Action be, and hereby is, entered against Plaintiff and  
in favor of Defendants, Wayne State University.

/s/ Hudson E. Deming  
Honorable Hudson E. Deming

Approved as to form:

/s/ Elmer L. Roller  
Elmer L. Roller, Esq.  
Attorney for Defendants

/s/ James H. Daniel 6-21-78  
James H. Daniel, Esq.  
Attorneys for Plaintiff

(Filed November 24, 1980)

AT A SESSION OF THE COURT OF APPEALS OF THE  
STATE OF MICHIGAN. Held at the Court of Appeals in  
the City of Lansing, on the 19th day of November in the  
year of our Lord one thousand nine hundred and eighty

Present the Honorable

Robert J. Danhof, C.J.

Presiding Judge

Michael F. Cavanagh

Michael J. Kelly

Judges

No. 43164

L.C. # 6049

---

CHIN NIEN TSANG,  
Plaintiff-Appellant,

-vs-

BOARD OF GOVERNORS OF WAYNE  
STATE UNIVERSITY et al,  
Defendants-Appellees.

---

In this cause an application for delayed appeal is filed  
by plaintiff-appellant, and an answer in opposition thereto  
having been filed, and due consideration thereof having  
been had by the Court,

IT IS ORDERED that the application be, and the same  
is hereby DISMISSED for lack of jurisdiction, having been  
filed more than 18 months from the entry of the judg-  
ment from which plaintiff seeks delayed appeal. *Treece*  
*v. Greyhound Bus Co*, 63 Mich App 63, 68 (1975); GCR  
1962 806.2.

(Filed January 19, 1981)

AT A SESSION OF THE COURT OF APPEALS OF THE  
STATE OF MICHIGAN. Held at the Court of Appeals in  
the City of Lansing, on the 8th day of January in the year  
of our Lord one thousand nine hundred and eighty

Present the Honorable  
Robert J. Danhof, C.J.  
Presiding Judge  
Michael F. Cavanagh  
Michael J. Kelly  
Judges

No. 43164

---

CHIN NIEN TSANG,  
Plaintiff-Appellant,

v

BOARD OF GOVERNORS OF WAYNE  
STATE UNIVERSITY, et al,  
Defendants-Appellees.

---

In this cause an application for rehearing has been filed  
by the plaintiff-appellant and an answer in opposition  
thereto having been filed, and due consideration thereof  
being had by the Court,

IT IS ORDERED that the application for rehearing be,  
and the same is hereby DENIED.

(Filed July 28, 1981)

AT A SESSION OF THE SUPREME COURT OF THE  
STATE OF MICHIGAN. Held at the Supreme Court  
Room, in the City of Lansing, on the 28th day of July in  
the year of our Lord one thousand nine hundred and eighty.

Present the Honorable

Mary S. Coleman.

Chief Justice.

Thomas Giles Kavanagh.

G. Mennen Williams.

Charles L. Levin.

John W. Fitzgerald.

James L. Ryan.

Blair Moody, Jr.

Associate Justices.

CR 32-397

SC: 66575

COA: 43164

LC: 6049

---

CHIN NIEN TSANG,  
Plaintiff-Appellant,

v

BOARD OF GOVENORS OF WAYNE  
STATE UNIVERSITY,  
Defendant-Appellee.

---

On order of the Court, the application for leave to ap-  
peal is considered, and it is DENIED, because the Court  
is not persuaded that the questions presented should be re-  
viewed by this Court.

(Filed October 13, 1981)

AT A SESSION OF THE SUPREME COURT OF THE  
STATE OF MICHIGAN, Held at the Supreme Court  
Room, in the City of Lansing, on the 13th day of October  
in the year of our Lord one thousand nine hundred and  
eighty one.

Present the Honorable

Mary S. Coleman.

Chief Justice.

Thomas Giles Kavanagh.

G. Mennen Williams.

CR 32-397a

Charles L. Levin.

John W. Fitzgerald.

James L. Ryan.

Blair Moody, Jr.

Associate Justices.

SC: 66575

COA: 43164

LC: 6049

CHIN NIEN TSANG,  
Plaintiff-Appellant,

v

BOARD OF GOVERNORS OF WAYNE  
STATE UNIVERSITY,  
Defendant-Appellee.

---

On order of the Court, the motion by plaintiff-appel-  
lant for reconsideration of this Court's order of July 28,  
1981, is considered, and the motion is DENIED, because it  
does not appear that said order was entered erroneously.

(Dated November 12, 1976)

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE  
COUNTY OF WAYNE

---

CHIN NIEN TSANG,  
Plaintiff,

vs

THE WAYNE STATE UNIVERSITY,  
Defendant.

---

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND MONEY JUDGMENT**

The above named plaintiff, CHIN NIEN TSANG, by herself, complains of defendant as follows:

1. Plaintiff states that she is a resident of the City of Warren, Macomb County, Michigan; defendant has its principal offices in the City of Detroit, County of Wayne and State of Michigan.

2. Plaintiff further states that her Plan of Work for the doctor of philosophy degree signed by dean and her adviser is her legal contract with the defendant.

3. That she has completed the graduate level course requirements for the Doctor of Philosophy degree in Education.

4. That ever since January 8, 1973 when she went to see her adviser the second time pertaining to her final qualifying examination, she found the situation on the defendant's campus became totally impossible for her to have the promised conditions to complete her degree program.

5. That the promised conditions for her to complete the said degree program are quoted from the pamphlet *Policies and Procedures for the Doctorate in Education* and from the 1971 - 1972 *Bulletin of the Wayne State University* as follows:

- a. "The comprehensive examination in the area of concentration will be prepared by the student's advisory committee."
- b. "The student's advisory committee shall consist of a minimum of three members. Specifically: (1) The advisor . . ."
- c. "The committee . . . should be composed of faculty from whom the student has had or will take course work."
- d. "Dissertations must be completed under the direction of the student's adviser at Wayne State University."

6. That she was deprived of not only an adviser but also an advisory committee to prepare the test. Both tests (One she took in June 1973 and the other she took in May 1974) were prepared by a group of examiners. One half of the number of the examiners who prepared her second test were not her professors.

7. That the length of time she spent on resolving the problems generated from the aforementioned deprivation was extensive. The deprivation of the promised conditions to her has cost her not only time and money but also a great deal of headache which ordinarily a student should not have to suffer.

8. That the defendant insists that the case needs an academic judgment. A copy of defendant's recent letter



to the plaintiff is attached hereto and marked "EXHIBIT A".

Wherefore, the plaintiff petitions (1) for a Declaratory Judgment ordering the defendant to confer a doctor of philosophy degree in Education to her and (2) for the award of thirty thousand dollars (\$30,000) to compensate for the sufferings she had to endure in the past few years, together with Court costs and attorney fees. (Should she need another attorney to represent her.)

/s/ Chin Nien Tsang  
Chin Nien Tsang

/s/ Chin Nien Tsang  
Chin Nien Tsang  
Attorney for Plaintiff

STATE OF MICHIGAN, COUNTY OF MACOMB, ss.

On this 12th day of November, 1976, before me personally appeared the above named CHIN NIEN TSANG, who being first duly sworn, deposes and says, that she has read the foregoing Petition by her subscribed and knows the contents thereof, and that the same is true to the best of her knowledge, information and belief.

/s/ Clinton D. Meyer  
Clinton D. Meyer  
Notary Public, Oakland  
County, Michigan  
Acting in Macomb County

My Commission Expires January 2, 1979

(Dated September 10, 1982)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

C.A. No. 8273399  
Hon. Robert E. DeMascio

---

CHIN NIEN TSANG,  
Plaintiff,

-vs-

BOARD OF GOVERNORS OF WAYNE  
STATE UNIVERSITY,  
Defendant.

**COMPLAINT IN ACTION FOR BREACH OF CON-  
TRACT BY RENDERING PERFORMANCE IMPOS-  
SIBLE AND FOR VIOLATION OF THE 5TH AND  
14TH AMENDMENTS OF THE UNITED STATES  
CONSTITUTION**

1. This action arises under both the federal and the state constitutions. The guaranteed rights secured in the 5th Amendment (the deprivation of ownership clause) and in the 14th Amendment (the due process clause and the equal protection clause) of the United States Constitution are similarly provided in the Michigan Constitution of 1963, Article 1, Declaration of Rights: § 2, Equal Protection of laws and § 17, Due Process of Laws. The Plaintiff claims that the Defendant's refusal to provide for the Plaintiff its obligatory terms of the contract has not only denied

Plaintiff's right to equal protection of laws but also deprived Plaintiff a private property ownership which are respectively guaranteed in the 14th and 5th Amendments of the United States Constitution. This complaint is a federal question. Jurisdiction of this Federal District Court has been conferred by the 28 U.S.C. Chapter 85, § 1331.

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest, costs, and arises under the constitution, laws, or treaties of the United States."

The federal courts have jurisdiction of an action arising under the Fourteenth Amendment to the Federal Constitution, as where it is claimed that there is a violation of the provision that no state shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.

2. The Plaintiff is seeking from the Defendant both damage and injunctive relief. The injunctive relief is a scholastic degree and the damage relief is a pecuniary award to compensate the sufferings she has sustained in the past nine years. This amount exceeds, exclusive of interest and costs, the sum of ten thousand dollars.
3. The Plaintiff, CHIN NIEN TSANG, is a citizen of the State of Michigan residing on 4257 Hillcrest Drive, Warren, Michigan.
4. The Defendant, a public educational institution named WAYNE STATE UNIVERSITY, is also a citizen of the State of Michigan in which it has its principal place for superior instruction.

5. The Plaintiff received her Master of Education Degree from the Defendant University in December, 1971. (Exhibit A)
6. On July 20, 1972 the Plaintiff's former Advisor, Dr. Wilhelm Reitz signed Plaintiff's DOCTOR OF PHILOSOPHY PLAN OF WORK. This same PLAN OF WORK was subsequently signed by the former Dean of the Graduate Studies, Dr. Thomas Rumble on July 24, 1972 (Exhibit B).
7. These signatures on Plaintiff's PLAN OF WORK for her Ph. D. degree program are the approval and agreement of both the Dean and the Advisor on Plaintiff's program leading to a Ph. D. degree.
8. The terms in this type of contract are expressed. The expressed terms are the rules, regulations, procedures, and requirements published by an institution for its students to comply with or for the university to provide for its students.
9. Based upon those rules, regulations and requirements published by the Defendant University at the time of the Plaintiff's enrollment, the Plaintiff complied with the contractual terms faithfully. The Plaintiff paid tuitions, had a total scholastic honor point average of 3.6 (in a scale of A=4, B=3, C=2), fulfilled the foreign language requirement, fulfilled the residence requirement and completed all course requirements for a Ph.D. degree (Exhibit C<sub>1</sub>, C<sub>2</sub>).
10. Soon after the Plaintiff had finished all the course requirements for the Ph.D. degree, the Plaintiff had a discussion with her Advisor pertaining to the scope of the final qualifying examination. When the Plaintiff was about ready to take the examination, she went to see her Advisor on January 8, 1973 for scheduling a

date for the written final qualifying examination. She was suddenly and unexpectedly informed that her Advisor would no longer be her Advisor unless the situation between her Advisor and the Dean of the Graduate Studies could be clarified. Her Advisor clarified his sudden resignation from being her Advisor by showing her the written memorandum written by the Dean of the Graduate Studies to the Director of Admissions of the College of Education saying that Plaintiff's Advisor was not competent to be her Advisor. With all her efforts to help clear up the misunderstanding created by and among the administrative officers of the Defendant University, none of the administrative officers involved in that memorandum tried to clarify the situation (Exhibit D). The Plaintiff lost her Advisor of 2½ years of Advisor/student relationship without any fault of her own.

11. The Plaintiff's requests for an advisor were made in vain. Dr. Claire C. Irwin, the then Deputy Chairperson of the Department of Evaluation and Research of the College of Education stated in her letter of March 26, 1973 to the Plaintiff, "Since you do not have an advisor in the area of Educational Evaluation and Research, it is not possible to schedule your first Final Written Qualifying Examination as you requested in your letter." (Exhibit E).
12. The Plaintiff brought the situation to the then Provost of the University, to the Ombudsman of the University, to the Vice President of the University Relations. The Plaintiff had exhausted all administrative remedies in the Defendant University. The refusal of the Defendant to perform valid contract is the Defendant University's refusal to provide the Plaintiff an advisor at that critical time when she needed one to complete her program. It is a breach of contract.

13. At the time of Plaintiff's enrollment, the provisions which the Defendant University promised all of its doctoral candidates are as follows:

A. In the *COLLEGE OF EDUCATION POLICIES AND PROCEDURES FOR THE DOCTORATE IN EDUCATION* (1971 - 1972)

- a. "Comprehensive examination in the area of concentration will be prepared by the student's advisory committee." Page 7, (Exhibit F).
- b. "The student's advisory committee shall consist of a minimum of three members: Specifically: (1) The Advisor . . . Page 8, (Exhibit G).
- c. "Dissertations must be completed under the direction of the student's advisor at WAYNE STATE UNIVERSITY." Page 11 (Exhibit H).

B. In the *WAYNE STATE UNIVERSITY 1971-1972 BULLETIN, COLLEGE OF LIBERAL ARTS, ACADEMIC REGULATIONS, GRADUATE*, it is stated,

"The committee . . . should be composed of faculty from whom the student has had or will take course work." Page 91, (Exhibit J).

The above listed provisions are the expressed contractual terms promised by the Defendant University to its doctoral students.

14. The unexpected refusal of the Defendant University to fulfill its contractual obligations at the time when the Plaintiff started to need them in order to complete the remainder of her Ph.D. program was an impediment to the Plaintiff's performance.

15. Regularly, prior to a final written qualifying examination, a doctoral student with the help of the advisor would have an advisory committee formed according to the written rules stated in paragraph 13 of the instant complaint (Exhibits F, G, J). The student would be asked to submit a competency list to the advisor. With that list in his hands, the advisor would know the student's competence. The advisor, acting like a coordinator in the advisory committee, would instruct each committee member to write questions within the student's competency list.
16. When the Plaintiff took the first written qualifying examination on June 12, 1973, the Plaintiff had no advisory committee and no advisor (The Defendant University refused to provide the Plaintiff an advisor.) to coordinate the examination as other doctoral students would be provided with before their examinations. Although the Plaintiff submitted a competency list to the then Acting Dean of the College of Education, the examiners (One half of the number of the examiners were not faculty from whom the Plaintiff had taken course work.) did not know what questions to write. Instead of writing questions within the Plaintiff's competency list, each examiner wrote questions within his or her own fancy. It was simply an impossible to perform situation. About five months after the first final qualifying examination, the Plaintiff talked to Dr. Sigurd Rislov, one of the Plaintiff's examiners, pertaining to the examination. Dr. Rislov said, "I just did not know what questions to write. So, I wrote a wild question. You did not do well on it, I understand."

The Plaintiff requested him to write down his comment. He did. (Please read Exhibit K.) From his



short note, it is evident that irregularity of writing the test questions by the examiners for the Plaintiff's examination did exist.

17. About a year later, when the Plaintiff tried to take the examination the second time, the examiners again wilfully, unreasonably, irresponsibly and capriciously wrote questions outside of the Plaintiff's competency list. This intentional insistance of testing the Plaintiff outside of her competency list made the Plaintiff suffer mentally.
18. The refusal of the Defendant University to provide an advisor and an advisory committee for the Plaintiff while it provide for all other doctoral candidates under similar conditions has also violated (note 7, § 1) the equal protection of laws of the Fourteenth Amendment of the United States Constitution and of the Michigan Constitution of 1963, Art. 1, § 2. The violation of the Fourteenth Amendment of the United States Constitution by the Defendant University has made the situation impossible for the Plaintiff to perform.
19. On January 30, 1975, the Plaintiff was terminated from the Ph.D. degree program by the Provost of the Defendant University.
20. No notice, proofs, and hearing had proceded the termination. The Defendant University violated the procedural due process of law of the Michigan Constitution of 1963, Art. 1, § 17. In the State of Michigan, where property and liberty interests of a state college student are involved, he is entitled to due process requirements with respect to hearing procedures. The Plaintiff had a protectable property interest in her Ph.D. degree. She lost her protectable property interest without procedural due process of law.

21. The case was originally brought into the Wayne County Circuit Court on November 12, 1976. Subsequently, the case was entered into the Michigan Court of Claims, the Michigan Court of Appeals, and the Michigan Supreme Court. Although the Plaintiff has exhausted the State judiciary remedies, this federal question was not at issue in the State proceedings (Exhibits L, M, N, O, P). From these Michigan State Courts' orders, it is evident that the violation or non-violation of the Plaintiff's federal constitutional rights by the Defendant University is not shown in the State Court's decisions. Federal Constitutional rights are now causes of actions raised in this Federal District Court. These federal issues were not raised in the State proceedings.
22. The Plaintiff is entitled to the Ph.D. degree which she is seeking. She paid her tuitions, fulfilled the foreign language requirement, fulfilled the residence requirement, and completed all her Ph.D. program course requirements. She demonstrated in her past records that she had 3.6 honor point average in all her graduate level courses and 3.8 honor point average in the courses of her area of concentration (All the EER courses, Exhibits C<sub>1</sub>, C<sub>2</sub>). Had the Defendant University not breached the contract, the Plaintiff would have taken both the written and oral final qualifying examinations satisfactory. Had the Defendant kept its expressed obligations, the Plaintiff would have finished her dissertation proficiently. The Plaintiff's ability to write a dissertation is clearly demonstrated in her work, *PROFILING THE DEMAND FOR QUALITY IN PUBLIC EDUCATION IN AMERICA* (The call number for her work in the Library of the Wayne State University is T782 c44). Her methods of design and research in this piece of work conform in every

respect with the DOCTORAL DISSERTATION formats of the ACADEMIC SERVICE DIVISION OF THE COLLEGE OF EDUCATION (Exhibits Q<sub>1</sub>, Q<sub>2</sub>) and of the OFFICE OF THE DEAN AND ASSOCIATE PROVOST FOR GRADUATE STUDIES (Exhibits R<sub>1</sub>, R<sub>2</sub>) of the Wayne State University.

23. Withholding the Plaintiff's degree because the Defendant University had wilfully and unreasonably refused to comply with its own expressed obligations is a deprivation of property ownership to the Plaintiff, a violation of the Fifth and Fourteenth Amendments of the U. S. Constitution. The 14th Amendment stated, ". . . nor shall any state deprive any person of life, liberty, or property without due process of law."
24. The Plaintiff is entitled to a damage of 1.3 million dollars from the Defendant University because the Defendant University breached the contract, impeded the Plaintiff's performance, and deprived the Plaintiff of a personal property - Ph.D. degree. The deprivation of the Ph.D. degree to which the Plaintiff is entitled has:
  - A. made the Plaintiff suffer mentally in the past nine years. The Defendant University, knowing its refusal of a duty owed to the Plaintiff would cause mental pain and suffering to the Plaintiff, had intentionally, wilfully, irresponsibly and unreasonably carried out its wrongful act with gross carelessness.
  - B. ruined the Plaintiff's probable job opportunity.
25. Wherefore, the Plaintiff prays for the following relief against the Defendant University:

- A. The Defendant University confers a Doctor of Philosophy degree in Higher Education on the Plaintiff.
- B. The Defendant pays a damage of 1.3 million dollars to the Plaintiff.

/s/ Chin Nien Tsang  
Chin Nien Tsang, in Pro Per  
4257 Hillcrest Drive  
Warren, Michigan 48092  
Tel. No. 264-7120

Date: Sept. 10, 1982

Subscribed and sworn to before me this 10 day of  
Sept. 1982

/s/ William B. Wright  
Notary Public, Oakland  
County, Michigan Acting  
in Macomb County

My Commission Expires March 18, 1983.

